

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	:	
	:	
Redevelopment of Spectrum to	:	ET Docket No. 92-9
Encourage Innovation in the	:	
Use of New Telecommunications	:	RM-7981
Technologies	:	RM-8004

**REPLY COMMENTS OF
ASSOCIATED PCN COMPANY**

Associated PCN Company ("APCN"), by its attorney, herein submits its Reply Comments in the Commission's Third Notice of Proposed Rulemaking ("Notice") in the above-captioned docket.

**I. NO RELOCATION OF INCUMBENT 2 GHZ MICROWAVE USERS
IS NECESSARY.**

As the Commission is well aware, APCN has stated in this docket and elsewhere that the plan to relocate incumbent 2 GHz licensees is premature and unnecessary. APCN believes that incumbent 2 GHz licensees can coexist in a non-interfering environment with new services through the use of spectrum sharing techniques. These techniques will be necessary in any event in order to accommodate public safety users, all of whom will remain in the 2 GHz band. As APCN and others have pointed out, the percentage of incumbent users which fall into the public safety category reaches 50% or more in a number of markets, including Los Angeles where APCN is conducting its PCS experiments.

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List A B C D E

Some PCS proponents asked the Commission to make the transition period as short as possible,¹ citing the need to develop new technologies quickly and citing the precedent from other countries where incumbent users are removed from the desired band in a quicker and more unceremonious fashion than proposed by the Commission. If the Commission adopts the technical plan and frequency allocation scheme advanced by APCN, a permanent accommodation of public safety users in the 2 GHz band will work and the immediate relocation of private 2 GHz users will not be necessary. APCN continues to believe that plans to relocate these users on a fast track basis is a premature exercise. As PCS and other new technologies are placed in the 2 GHz band and their usage of the spectrum grows, there will be time enough to determine whether permanent sharing of the frequency band will be possible, as APCN firmly believes, or whether some relocation is necessary. At the present time, however, APCN submits that immediate implementation of a relocation plan is not necessary.

II. IF RELOCATION IS DEEMED NECESSARY, THE VOLUNTARY NEGOTIATION/TRANSITION PERIOD SHOULD BE AS SHORT AS POSSIBLE.

The Commission has provided comprehensive protection to incumbent users in the 2 GHz band under the proposed involuntary relocation mechanism. Thus, no incumbent will be required to relocate unless requested to do so and even then it must be provided with facilities comparable to its current

¹See e.g., Comments of Cox Enterprises, Inc. (12 months).

2 GHz facilities and all costs must be paid by the party seeking the involuntary relocation. This plan totally protects incumbent microwave users. Because this plan is so comprehensive, a voluntary negotiation/transition period becomes virtually superfluous. An incumbent user would have very little incentive other than to receive compensation above costs, something which is not in the public interest, to agree to relocate during a voluntary transition period. Therefore, this voluntary period should be as short as possible. APCN suggests that this transition period should be no more than three years. We note that some commenters have asked for transition periods of as long as ten years.² This, however, would give incumbents too much leverage over the users of new technology if, in fact, relocation became a technical and business necessity.

As an additional reason for keeping the voluntary transition period as short as possible, APCN reiterates the point that it made in its comments about unresolved interference conflicts. The Commission has stated that where there are disputes involving interference between co-primary new users and incumbent users, the facility which was licensed first will receive interference protection. On the other hand, if a new technology provider needs an incumbent user's frequencies, the new provider can request involuntary relocation of the incumbent, but only after the voluntary transition period ends. Subject, of course, to APCN's position

²See e.g., Comments of Southwestern Bell Corporation.

that spectrum sharing in the 2 GHz band will work, APCN therefore has urged that the transition period before involuntary relocation can be instituted should be as short as possible in order to avoid interference conflicts which work to the clear disadvantage of a new technology provider.

III. THE INVOLUNTARY RELOCATION MECHANISM MUST ASSURE THE INCUMBENT 2 GHz MICROWAVE USER A TRANSPARENT TRANSITION.

In the event of an involuntary relocation, the Commission has proposed to make the new technology provider guarantee payment of all relocation expenses, construct the new microwave facilities at the relocated frequencies and demonstrate that the new facilities are comparable to the old facilities. APCN wishes to state again that the transition process involves more than the basic framework which the Commission has outlined. First and foremost, service disruptions must be kept to a minimum. In addition, all costs of relocation must be reimbursed, not just the cost of construction. For example, there are costs involved in training to use the new frequencies, instituting proper operating procedures, and many other costs associated with such a move.³ Furthermore, there should be strict guidelines regarding the technical comparability of the new spectrum and facilities.⁴

³See Comments of Niagara Mohawk Power Corporation at 11-12.

⁴See Comments of Association of American Railroads at 19-20; Comments of GTE Service Corporation at 7.

Finally, because disputes will inevitably arise between the new technology provider and the incumbent user who is being relocated, the Commission must institute an efficient dispute resolution mechanism. APCN urges the Commission to promulgate a rule requiring the use of binding arbitration.⁵ It is clearly in the public interest that the new provider and the incumbent user conclude any disputes in a timely fashion.

Respectfully submitted,

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⁵See Comments of Lower Colorado River Authority at 22.